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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/991,979	11/26/2001	Ewa Kolby-Falk	000500-271	4292

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Ronald L. Grudziecki, Esq.  
BURNS, DOANE, SWECKER & MATHIS, L.L.P.  
P.O. Box 1404  
Alexandria, VA 22313-1404

EXAMINER

REICHLER, KARIN M

ART UNIT	PAPER NUMBER
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3761

DATE MAILED: 04/22/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

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<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	09/991,979	KOLBY-FALK, EWA	
	<b>Examiner</b>	<b>Art Unit</b>	
	Karin M. Reichle	3761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 28 December 2004.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-16 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-16 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 12-28-04 (figs 5 and 6) is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)             | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                                    |

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 12-28-04 has been entered.

### ***Specification***

#### ***Drawings***

2. The drawings were received on 12-28-04. These drawings are approved.

However see remaining informalities in the drawings set forth in the following paragraph.

3. The drawings are objected to because in Figure 2, the line from 104 should lead to the absorbent. (It is noted that the line from 102 should then lead to the upper layer). In Figure 1 the line from 113 should be an arrow. Also 125 should extend all the way to the structure it denotes. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be

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removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

4. As noted in the Office Action of 9-20-04 it was unclear whether the replacement sheet of Figures entered 12-28-04 was to be considered in combination with those filed 12-29-03 or not. Since Applicant did not provide any further clarification, the Figures filed 12-29-03 were not considered in combination with those filed 12-19-03.

### *Description*

5. The use of the trademark VELCRO(R), paragraph 0030, has been noted in this application. It should be capitalized wherever it appears and be accompanied by the generic terminology.

Although the use of trademarks is permissible in patent applications, the proprietary nature of the marks should be respected and every effort made to prevent their use in any manner which might adversely affect their validity as trademarks.

Trademarks should either be in all capital letters or with a symbol but not both.

***Claim Objections***

6. Claim 15 is objected to because of the following informalities: In claim 15, last line, after “hydrogel”, insert ---. Appropriate correction is required.

***Claim Rejections - 35 USC § 112***

7. Claims 1-14 and 16 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 1 now requires the elevation portion consist of a hydrogel. However, claims 4-7 require the elevation portion to have a cavity or well formed in the hydrogel and such cavity or well comprising a porous medium (Note that the description of such medium, see, e.g., paragraph 53, does not disclose that such is a hydrogel), i.e. the elevation portion consists of more than a hydrogel. Therefore, it is unclear from the claims whether the claimed elevation portion consists of a hydrogel or not. See following paragraph. It is noted that this issue was previously raised in the 9-20-04 Office Action. In regard to claim 16, a positive structural antecedent basis for “the elevation portion” should be set forth. Also, are the elevation portion and the raised portion one and the same, i.e. how many elevated or raised portions are being required at a minimum? One ? Two?

***Claim Language Interpretation***

8. Due to the lack of clarity in claims 1-14, the claims will be interpreted to require that elevation portion comprise a portion which consists of hydrogel. Claim 15 does not invoke 35

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USC 112, sixth paragraph, because it does not employ proper “means plus function” form and/or includes a recitation of sufficient specific structure to perform the claimed function. Claim 16 will be interpreted to include some part which elevates or expands which consists of hydrogel. It is noted that claims 1 and 15-16, as best understood, do not require the absorption part, expanding means or absorption body to be entirely formed of a hydrogel nor consist of the elevation portion.

***Claim Rejections - 35 USC § 102***

9. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

10. Claims 1-16 are rejected under 35 U.S.C. 102(e) as being anticipated by Lindsay et al ‘955.

Claims 1, 15 and 16: see Figure 4, liquid permeable top side or liquid permeable means or liquid permeable portion is 12 and 42, liquid impermeable layer is 14, absorption body is at least 18 which is formed by a preformed dehydrated hydrogel, see col. 22, lines 18-24, col. 28, lines 43 et seq (and thus Kellenberger ‘343, e.g., at col. 7, lines 42-55 thereof and thus Van Phan et al ‘035, e.g., at col. 4, lines 60 et seq, col. 25, lines 21-34, col. 37, lines 55-62 and col. 18, lines 54-58) which as a result of the performing, when wetted, swells in the thickness direction and forms an elevation portion on the top side of the product, see col. 23, lines 36-54, col. 27, line 15-col. 28, line 18. In light of the discussion in the Claim Language Interpretation section supra, the Lindsay device teaches an elevation portion which comprises at least a portion which consists of a hydrogel which elevation portion is at least part of an absorption part as claims 1-14

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are interpreted to require, the Lindsay device teaches a elevation portion which consists of a hydrogel which elevation portion is at least part of an expanding means as claim 15 is interpreted to require and the Lindsay device teaches some part which elevates or expands which consists of hydrogel as claim 16 is interpreted to require, see again the portions cited supra. With regard to claim 16, also see col. 15, lines 1-2.

Claim 2: see also col. 34, line 8-16. It is noted that the claim does not require the preformed dehydrated hydrogel has the sticky surface.

Claim 3: see '343 again at col. 5, lines 17-28.

Claims 4-8: see col. 24, line 62-col. 25, line 9 and col. 29, lines 21-39 and col. 30, line 11.

Claims 9-14: see col. 23, lines 36-39 and col. 24, lines 4-31.

### ***Response to Arguments***


11. Applicant's remarks with regard to matters of form have been considered but are either deemed moot because the issue has not been reraised or is deemed not persuasive for the reasons set forth supra. With regard to Applicant's remarks with regard to the Lindsay et al reference, such remarks have been considered but are deemed not persuasive in that such remarks are narrower than the claim language, see, e.g., the claim language interpretation section supra, and the teachings of Lindsay et al, see discussion in paragraph 10.

*Conclusion*

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Karin M. Reichle whose telephone number is (571) 272-4936. The examiner can normally be reached on Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Larry Schwartz can be reached on (571) 272-4390. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Karin M. Reichle  
Primary Examiner  
Art Unit 3761

KMR  
April 8, 2005